RESOLUTION NO. 74272

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSE MAKING CERTAIN FINDINGS CONCERNING SIGNIFICANT EFFECTS, MITIGATION MEASURES, ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, AND MAKING FINDINGS CONCERNING ALTERNATIVES FOR THE ZANKER MATERIAL RECYCLING FACILITY PROJECT (FILE NO. PDC06-120), FOR WHICH AN ENVIRONMENTAL IMPACT REPORT HAS BEEN PREPARED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970, AS AMENDED.

WHEREAS, approval of the Zanker Material Recycling Facility Project would require the City of San Jose ("City") to adopt a resolution making finding concerning the significant environmental effects of that action as described in the Final Environmental Impact Report for the Zanker Material Recycling Facility (the "FEIR"), pursuant to the California Environmental Quality Act of 1970, all as amended from time to time (collectively, "CEQA"); and

WHEREAS, prior to the adoption of this Resolution, the Planning Commission of the City of San Jose certified that the FEIR was completed in accordance with the requirements of CEQA; and

WHEREAS, no appeal of the certification of the FEIR by the Planning Commission was filed with the City of San Jose; and

WHEREAS, the City Council of the City of San Jose is the decision-making body for the proposed Zanker Material Recycling Facility; and

WHEREAS, CEQA requires that in connection with the approval of a project for which an environmental impact report has been prepared which identifies one or more significant environmental effects, the decision-making body must make certain findings regarding those significant effects on the environment identified in the environmental impact report; and

WHEREAS, this resolution has been prepared to satisfy that findings requirement under CEQA.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE:

THAT THE CITY COUNCIL hereby finds that it has independently reviewed and analyzed the FEIR and other information in the record and has considered the information contained therein including the written and oral comments received at the

public hearings on the FEIR and on the Project, prior to acting upon or approving the Project, and has found that the FEIR represents the independent judgment and analysis of the City of San Jose as Lead Agency for the Project, and designates the Director of Planning, Building and Code Enforcement at his office at 200 East Santa Clara Street, San José, California 95113-1905, as the custodian of documents and records of proceedings on which this decision is based; and

THAT THE CITY COUNCIL does hereby make the following findings with respect to the significant effects on the environment of the Project as all of this is described in the FEIR, taken together with the oral and written testimony submitted to the City Council in connection with the FEIR and/or the Project:

I. FINDINGS CONCERNING SIGNIFICANT ENVIRONMENTAL EFFECTS

A. AIR QUALITY

1. **Impact**

The proposed project could result in construction related air quality impacts from dust (PM10) and diesel exhaust.

Mitigation

Implementation of the measures recommended by BAAQMD and those listed below would reduce the air quality impacts associated with grading and new construction to a less than significant level. Measures to reduce diesel particulate matter and PM2.5 from construction are recommended to ensure that short-term health impacts to nearby sensitive receptors are avoided.

Dust (PM10) Control Measures:

- Water all active construction areas at least twice daily and more often during windy periods. Active areas adjacent to residences should be kept damp at all times.
- Cover all hauling trucks or maintain at least two feet of freeboard.
- Pave, apply water at least twice daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas.
- Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas and sweep streets daily (with water sweepers) if visible soil material is deposited onto the adjacent roads.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (i.e., previously-graded areas that are inactive for 10 days or more).
- Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles.
- Limit traffic speeds on any unpaved roads to 15 mph.
- Replant vegetation in disturbed areas as quickly as possible.
- Suspend construction activities that cause visible dust plumes to extend beyond the construction site.

- During renovation and demolition activities, removal or disturbance of any materials containing asbestos or other hazardous pollutants will be conducted in accordance with BAAQMD rules and regulations.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

B. BIOLOGICAL RESOURCES

1. Impact
Although Burrowing Owls have not been observed on the site, they could nest in the area in the future. Disturbance that causes nest abandonment, injury or mortality to Burrowing Owls would constitute a significant impact.

Mitigation
The developer shall have a qualified biologist complete a survey and prepare a report not more than one month prior to construction activities to determine the presence of Burrowing Owls on the site. If owls are present on the site, a mitigation program shall be developed in conformance with the requirements of the California Department of Fish and Game and the U.S. Wildlife Service. If mitigation includes relocation, owls shall not be relocated during the nesting season (March though August). Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

2. Impact
Construction activities such as tree removal and site grading could disturb a nesting raptor on-site or immediately adjacent to the site.

Mitigation
If possible, construction shall be scheduled between October and December (inclusive) to avoid the raptor nesting season. If this is not possible, pre-construction surveys for nesting raptors shall be completed by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be completed no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is

found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the state of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The contractor shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the City's Environmental Principal Planner and the Director of Public Works prior to the start of construction.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

C. GEOLOGY AND SOILS

1. Impact
The proposed project could expose people, structures, and/or improvements to substantial geologic or soils hazards.

Mitigation
A detailed, design-level geotechnical investigation for the project shall be completed by the applicant and shall be reviewed and approved by the City Geologist, prior to approval of a PD Permit for any phase of the project. The geotechnical investigation shall identify and describe the specific engineering practices to be used to reduce or avoid all possible geologic hazards on the site, which shall be incorporated into the project design. It is anticipated that fill and waste under the building locations would be over-excavated. The specific approaches to be implemented will be based on additional site studies and final project design.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

D. HYDROLOGY AND WATER QUALITY

1. Impact
The proposed project will increase impervious surfaces on the site and may result in pollutants in post-project stormwater.

Mitigation
Post-Construction Mitigation Measures

- When the construction phase is complete, a Notice of Termination (NOT) for the General Permit for Construction will be filed with the RWQCB and the City of San José. The NOT will document that all elements of the SWPPP have been executed, construction materials and waste have been properly disposed of, and a post-construction stormwater management plan is in place as described in the SWPPP for the project site.

- All post-construction Treatment Control Measures (TCMs) will be installed, operated, and maintained by qualified personnel. On-site inlets will be stenciled in conformance with City requirements and cleaned out a minimum of once per year, prior to the wet season.
- The property owner/site manager shall keep a maintenance and inspection schedule and record to ensure that the TCMs continue to operate effectively for the life of the project. Copies of the schedule and record must be provided to the City upon request and must be made available for inspection on-site at all times.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

2. Impact
Construction of the proposed project could cause a significant temporary increase in the amount of contaminants in storm water runoff during construction.

Mitigation
Construction Mitigation Measures
- During construction, burlap bags filled with drain rock will be installed around storm drains to route sediment and other debris away from the drains.
- During construction, earthmoving or other dust-producing activities will be suspended during periods of high winds.
- During construction, all exposed or disturbed soil surfaces will be watered at least twice daily to control dust as necessary.
- During construction, stockpiles of soil or other materials that can be blown by the wind will be watered or covered.
- During construction, all trucks hauling soil, sand, and other loose materials will be covered and/or all trucks will be required to maintain at least two feet of freeboard.
- During construction, all paved access roads, parking areas, staging areas adjacent to the construction sites will be swept daily (with water sweepers).
- During construction, vegetation in disturbed areas will be replanted as quickly as possible.
- Prior to construction grading for the proposed land uses, the applicant will file a “Notice of Intent” (NOI) to comply with the General Permit administered by the Regional Board and will prepare a Stormwater Pollution Prevention Plan (SWPPP) which identifies measures that would be included in the amendment to minimize and control construction and post-construction runoff. The following measures would be included in the SWPPP:
  - Preclude non-stormwater discharges to the stormwater system.
  - Effective, site-specific Best Management Practices for erosion and sediment control during the construction and post-construction periods.
  - Coverage of soil, equipment, and supplies that could contribute non-visible pollution prior to rainfall events or perform monitoring of runoff.
  - Perform monitoring of discharges to the stormwater system.

- The developer will submit a copy of the draft SWPPP to the City of San Jose for review and approval prior to construction on the project site. The certified SWPPP will be posted at the site and will be updated to reflect current site conditions.

Finding
Implementation of the above FEIR mitigation measures will reduce the potentially significant impact to a **less than significant level.**

II. ALTERNATIVES TO THE PROPOSED PROJECT

A. NO PROJECT ALTERNATIVE

1. Description

Under the No Project alternative, the project site would continue to operate as the Zanker Material Processing Facility (ZMPF). ZMPF will continue to be allowed to accept up to 1,250 tons per day (tpd) of materials and to landfill a maximum of 350 tpd on site. The operations will continue to be the same as they are under existing conditions (i.e., processing would be done outside with equipment primarily powered by diesel engines). Approximately 335,000 cubic yards of remaining fill space is available for refuse disposal at the ZMPF as of 2006. Landfilling at the site is projected to continue for approximately five to 15 more years, with landfill closure at the latest by the year 2021. As long as permits could be obtained for the continued operation for the resource and recovery processing, the existing operation could continue indefinitely.

2. Comparison to Proposed Project

The continued operation of the ZMPF on the project site would not result in any significant impacts, as defined by CEQA. Impacts from the continued operation of the ZMPF would be those that occur from the conditions reflected throughout this EIR in the sections entitled “Existing Setting”.

The proposed project site is designated Private Open Space with a Solid Waste Landfill Overlay on the Land Use/Transportation Diagram of the San Jose 2020 General Plan. Continued operations, including closure of the on-site landfill in accordance with state and federal regulations would not increase the severity of any impacts or result in any new impacts compared to the proposed project.

3. Finding

The No Project Alternative (assuming the continued use of the existing on-site landfill) would not achieve project objectives related to a) increasing on-site efficiency of waste handling operations, b) increasing peak daily tonnage received, c) site operations 24 hours per day, and 7 days per week, and d) the

acceptance, transfer off-site, and the possible future screening and sorting of green/yard waste, municipal solid waste, and food waste. Overall, the No Project Alternative would be environmentally superior to the project because it would avoid all new environmental impacts. However, the No Project Alternative would not provide additional capacity for recycling and resource recovery and would not replace stationary diesel powered outdoor equipment with electricity powered equipment located indoors, therefore this alternative would not produce these important environmental benefits of the proposed project. For the above-stated reasons, this Alternative is found infeasible and rejected.

B. LOCATION ALTERNATIVE

1. Description

The former paper recycling site (237-29-002) is located at 1901 Junction Avenue in north San José. The 10.5-acre site is located west of Interstate 880 and north of East Brokaw Road, which is east of North First Street and Zanker Road and south of Charcot Avenue. A Union Pacific Railroad spur line borders the property to the southwest. The site is designated as *Industrial Park* in the General Plan, and is zoned as *Heavy Industrial.* The adjacent properties have the same General Plan and Zoning designations as the alternative site itself.

The site is centrally located, and since this location would be not too far from the current site, customers would be familiar with the area. Since the site is not currently owned by the applicant, funds for lease or purchase of the site would be required and the site would need to be available at reasonable cost. It is currently available for sale or lease.

2. Comparison to Proposed Project

The air quality and noise impacts would be similar to the proposed project because there are no sensitive receptors adjacent to the property or along the most direct access route to Interstate 880. This alternative would result in less likelihood of biological impacts because there are no biological resources adjacent to or on the site. The property is almost entirely paved and would require treatment of stormwater runoff similar to the project. This site is located on a flat and geologically stable site and would not likely require substantial design reinforcement for the proposed use. This alternative site is located in a very urban area and could result in increased nuisances and/or perceived conflicts with adjacent development compared to the proposed site which provides a greater separation from urban development. In addition, this alternative could result in greater traffic impacts because of the site's location in a more congested area of the City.

3. Finding

This site does meet some of the project objectives including its location in a central area of the county with truck freeway access, safe site access, separation from sensitive biological habitats, availability for redevelopment, and geologic stability. The proposed project would not be consistent with the General Plan designation of Industrial Park for the property and would require a General Plan amendment. Further, the site is surrounded by properties with General Plan designation of Light Industrial or Industrial Park which do not support operations like material recovery and landfill uses that are best segregated from other uses. In addition, it is doubtful that there is sufficient space for the proposed facility and ancillary uses on this property since it is substantially smaller than the proposed development area on the proposed project site. The project would likely have to be scaled down in order to function properly.

Development of the Junction Avenue site would likely reduce the biological impacts, geologic impacts, and visual impacts of the proposed project. Development of this alternative location may also result in some additional or greater impacts (land use compatibility and traffic) than would use of the proposed site. Based on its size and General Plan designation, the site would not meet the project objectives and would not be environmentally superior to the proposed project. For the above-stated reasons, this Alternative is found infeasible and rejected.

C. REDUCED SCALE ALTERNATIVE

1. Description

Under this alternative, the allowed peak daily tonnage received would be reduced to 3,750 tons per day compared to the proposed 5,000 tons per day, and the existing 1,250 tons per day. By reducing the throughput of the MRF, there would not be as many processing lines and a smaller truck fleet. The overall site layout would be the similar to the proposed project, although the paved area for the truck fleet and the size of the building might be slightly reduced.

2. Comparison to Proposed Project

The extent to which the Reduced Scale Alternative might reasonably be expected to result in lesser project impacts is discussed below for each of the areas of significant impact for the proposed project.

Under this alternative, the landfill would be closed and a final cover installed. Possible impacts to nesting Burrowing Owls would be similar to those from the proposed project. Mature trees would still need to be removed to allow for construction of the MRF building and paved access. Possible impacts to nesting raptors would be similar to those from the proposed project. Like the proposed project, preconstruction surveys and implementation of identified mitigation measures would avoid significant impacts to nesting Burrowing Owls and other raptors. Since a closed landfill cover will cause most stormwater to run off, the

quantity of runoff will not be significantly different from the proposed project. Under this alternative, the MRF building would be constructed at the same location although it might be smaller than the proposed 200,000 square foot building. Geology and soils impacts would be similar to those from the proposed project.

By reducing the peak daily tonnage by one-fourth, the vehicle miles traveled (and associated air emissions) would decrease proportionately.

3. Finding

The Reduced Scale Alternative would meet all of the basic objectives of the project except the following objective:

- Increase the peak daily tonnage received to 5,000 tons for the following reasons: to distribute the high cost of the facility, to extend the reach of the recycling programs, to accommodate seasonal, and weekly variations, and to accommodate growing tendencies to regulate and restrict landfilling and encourage recycling.

While this alternative is feasible from a land use and planning standpoint and would increase capacity for recycling and divert resources from landfills compared to the No Project Alternative, it would not supply as much capacity and diversion from landfills as the proposed project. While this Alternative is environmentally superior in that the impacts would be proportionately reduced as the peak daily tonnage is reduced, the project itself does not result in any significant unavoidable impacts, as all significant impacts are capable of being reduced to a less than significant level with feasible mitigation measures included in the project. For failure to meet the above-stated daily tonnage project objective, this Alternative is found infeasible and rejected.

III. MITIGATION MONITORING AND REPORTING PROGRAM

Attached to and adopted with this Resolution, and incorporated herein by reference, is the Mitigation Monitoring and Reporting Program for the Project. The Program identifies impacts of the Project, corresponding mitigation, designation of responsibility for mitigation implementation and the agency responsible for the monitoring action.

IV. STATEMENT OF IMPACTS AND BENEFICIAL CONSIDERATIONS

The City Council of the City of San José adopts and makes the following Findings regarding the significant impacts of the Project and the anticipated benefits of the Project.

A. SIGNIFICANT IMPACTS

With respect to the foregoing findings and in recognition of those facts that are included in the record, the City has determined that although the Project could result in significant impacts as disclosed in the FEIR prepared for this Project, the impacts would be reduced to a less than significant level by feasible changes or alterations to the Project.

B. BENEFICIAL CONSIDERATIONS

After review of the entire administrative record, including, but not limited to, the FEIR, the staff report, applicant submittals, and the oral and written testimony and evidence presented at public hearings, the City Council finds that specific economic, legal, social, technological and other anticipated benefits of the Project further justify the approval of this Project. The City Council specifically adopts and makes this Finding that this Project has eliminated or substantially lessened all significant effects on the environment. The Project will result in the following substantial benefits, which constitute specific economic, legal, social, technological and other considerations that further justify the approval of the Project:

C. BENEFITS OF THE PROJECT

1. The Project will provide San Jose residents and businesses with expanded opportunities to legally and safely dispose of and recycle household and business-generated solid waste.
2. The Project will contribute to the City's compliance with the California Integrated Waste Management Act of 1989 through the diversion of waste from the solid waste stream.
3. The Project will significantly contribute towards achieving the City of San Jose's adopted Green Vision Goal #5 to "Divert 100% of the waste from our landfill".
4. The Project will significantly contribute towards achieving the City of San Jose's adopted Zero Waste Goal of 75% waste diversion by 2013 and 90% waste diversion by 2022.
5. The Project will enhance the working environment for employees by providing indoor work space that offers protection from sun, rain, wind, heat and cold.
6. The Project's indoor operations and site paving will reduce the impacts of noise, dust, litter, odor, lighting, water runoff and pests on the surrounding community.
7. The Project will increase employment opportunities in "green collar" recycling jobs.
8. The Project increases the usefulness of an existing recycling facility, thus reducing the need to site and establish other facilities throughout the City.

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9. The Project increases the diversion of solid waste from local landfills, thus increasing the longevity of the City's landfill space and deferring the need to site new landfills in the community and/or trucking waste over greater distances to landfills outside the local area.

ADOPTED this 11th day of March, 2008, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO, NGUYEN, OLIVERIO, PYLE, WILLIAMS, REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

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CHUCK REED
Mayor

ATTEST:

_____
LEE PRICE, MMC
City Clerk